

Power of Attorney



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A power of attorney (POA) document allows you (the “principal”) to appoint an agent or attorney-in-fact to act on your behalf concerning your finances or property. Your agent should be someone you trust to make sound financial decisions for you.

There are several important terms to consider when you decide to appoint an agent through a POA:

- **Durable** - A POA is durable if it remains in effect even if you become incapacitated. In North Carolina, POAs are durable unless they expressly provide that they terminate upon the incapacity of the principal.
- **Springing** - A POA can “spring” into effect on a future date or upon the occurrence of a future event or contingency, such as your incapacity or incompetence.
- **Special or Limited** - A POA may authorize an agent to act for a special reason for a limited time or both.

Always remember, you can revoke your power of attorney at any time, as long as you are not incapacitated. Also, your power of attorney will terminate upon your death. A power of attorney is an important legal document and should always be kept in a safe place that can be quickly accessed when needed.



Frequently Asked Questions

1. What is a power of attorney?

A power of attorney or POA is a legal document that allows you, the principal, to grant authority to someone you trust to act on your behalf regarding your finances or property. This person is known as your agent or attorney-in-fact when acting under the authority of your power of attorney document.

2. What does a power of attorney allow my agent to do on my behalf?

You can grant your agent broad and sweeping powers or authority to perform almost any transaction for you. These powers can include one or all of the following subjects:

- real property transactions
- tangible personal property transactions
- stocks and bonds transactions
- banks and other financial institutions
- operation of an entity or business
- insurance and annuities
- estates, trusts, and other beneficial interests
- claims and litigation
- personal and family maintenance
- benefits from governmental programs or civil or military service
- retirement plans
- taxes
- make gifts
- create or change rights of survivorship
- create or change a beneficiary designation
- authorize another person to exercise the authority granted under the power of attorney

3. When is the power of attorney effective?

You can choose to make the power of attorney effective immediately, at a future date, or upon the occurrence of a future event or contingency, such as your incapacity.

4. What is a springing power of attorney?

A springing power of attorney is a power of attorney that is effective on a certain date or in the occurrence of a future event, such as your incapacity.

5. What is a limited or special power of attorney?

A limited power of attorney is effective only during a specific time period and a special power of attorney allows the agent to perform a specific power. Your power of attorney can be both limited and special.

6. Is the power of attorney valid during my incapacity?

A durable power of attorney remains in effect even if you become incapacitated. In North Carolina, a power of attorney is durable unless it expressly provides that it terminates upon your incapacity.

7. Is a power of attorney revocable?

Yes, you may revoke your power of attorney at any time as long as you are not incapacitated.

8. When does a power of attorney terminate?

There are several occurrences which can cause the termination of a power of attorney, and thus end the agent's authority. Any power of attorney automatically ends at the death of the principal. A power of attorney can also end upon a specific expiration date or occurrence. If a power of attorney is not durable, it will end upon the principal's incapacity.

9. Do I still need a will if I have a power of attorney?

Yes. Your power of attorney allows your agent to manage your assets during your lifetime and their granted authority ends at death. A will allows your executor to manage your assets after your death.

10. Do I need a power of attorney?

Yes. If you are unable to handle your own affairs for any reason, an agent may be able to step in and take care of your financial matters without having to gain authority from outside forces. If you become incapacitated and do not have a power of attorney, a court will likely appoint a guardian to act on your behalf, and it may not be the person you would have chosen. With guardianship proceedings, accountings of your finances must be filed with the court - making your assets a matter of public record. Additionally, there would be a delay in the management of your financial affairs until the guardian could be appointed.

11. Do I need an attorney to create a power of attorney?

SECU recommends that you consult an estate planning attorney in creating a power of attorney document. Although there are self-service templates that will allow you to create your own power of attorney, we recommend consulting an attorney to obtain legal advice about your individual situation to avoid making a costly error. A power of attorney can grant broad or limited powers over your finances and property, and an estate planning attorney can assist in creating a document that is specific to **your** needs.

12. What is the cost to have a power of attorney prepared by an attorney?

Attorney fees to draft a power of attorney vary depending on the complexity of your situation. You should ask about the fee before you agree to the services provided.

13. What should I do with my power of attorney document?

Your original power of attorney document should be kept in a safe place. You should give a copy to your attorney, your financial institution, your agent named in the document and/or a trusted relative. You may also elect to file the original with the Register of Deeds office in the county of your residence.

14. Is there a requirement that my power of attorney document be recorded?

In North Carolina, a power of attorney document is generally no longer required to be recorded to be effective after your incapacity. Your power of attorney document may need to be recorded if your agent is authorizing a transaction that must be recorded, such as a real estate sale or real estate loan.

Questions about powers of attorney may be answered by consulting an attorney. The material above is intended to be accurate; however, consultation with appropriate professionals for assistance is recommended.

